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Supreme Court of the United States

OCTOBER TERM, 1940

No. 180

SUPERIOR BATH HOUSE COMPANY------Appellant

vs.

Z. M. McCARROLL, Commissioner of Revenues for the State of Arkansas----------Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR APPELLEE

FRANK PACE, JR.,
LESTER M. PONDER,
State Capitol,
Little Rock, Arkansas.
Counsel for Appellee.

Conway Ptg. Co.

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SUBJECT INDEX

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OPINION OF THE SUPREME COURT OF ARKANSAS

The opinion of the Supreme Court of Arkansas is correctly referred to in appellant's brief. It was rendered on April 1, 1940.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The grounds on which the jurisdiction of this Court is invoked are set out in appellant's brief in a manner which is satisfactory to appellee.

STATEMENT OF THE CASE

Appellant corporation is a corporation organized and existing by virtue of the laws of the State of Arkansas and having its only place of business within the confines of the Hot Springs National Park Reservation, which is located within the geographical boundaries of the State of Arkansas.

Appellant is engaged exclusively in the business of operating a bath house under the rules and regulations prescribed for such operation on national park areas by the United States Department of the Interior.

Act No. 118 of the Acts of the General Assembly of Arkansas of 1929 levied an income tax of 2% upon the net income of all corporations doing business within the State. Appellant filed its income tax return for the year 1928 as required by Act 118 of 1929, stating on its return that it was not subject to the provisions of the Arkansas Income Tax Law by virtue of the fact that it was located on a federal reservation (R. 4).

The then Commissioner of Revenues of the State of Arkansas agreed with appellant that it was not subject to this tax and no further returns were filed by appellant to cover the subsequent years. In January, 1939, the Commissioner of Revenues of the State of Arkansas made demand upon appellant for the State Income tax for the years 1928 to 1938 inclusive, on the ground that appellant was subject to the provisions of the income tax law even though it was located on a federal reservation. Appellant denied its liability for this tax for the years in question, and to prevent the levying and execution upon his property for the collection of this tax, it brought an action in the Chancery Court of Pulaski County, Arkansas, to restrain appellee,

in his official capacity as Commissioner of Revenues of the State of Arkansas, from collecting a state income tax for the years 1928 to 1938, inclusive, from appellant (R. 2).

Appellee filed a special demurrer to appellant's complaint, and the cause was heard by the Pulaski Chancery Court upon the complaint and special demurrer, at which time the court dismissed appellant's complaint as to the years 1936 to 1938 inclusive, but held that appellee was barred from collection of the State Income Tax for the years 1929 to 1935 inclusive, by the statute of limitations imposed under Section 26 of Act 118 of the Arkansas General Assembly of 1929 (R. 14).

Both parties declined to plead further and appellant prayed an appeal to the Arkansas Supreme Court which was granted. Appellee prayed a cross-appeal to the Arkansas Supreme Court on that portion of the decision of the Pulaski Chancery Court which held that the collection of the income tax for the years 1929 to 1935 inclusive, was barred by the statute of limitations. As to the year 1928, appellee conceded that the collection of the tax for that year was barred by the statute of limitations because appellant had filed its return for that year as required by law, and more than the statutory period had elapsed before appellee had made his demand for the payment of income tax.

The Arkansas Supreme Court affirmed the decision of the Chancery Court of Pulaski County upon the appeal and reversed the opinion of the Chancery Court of Pulaski County upon the cross-appeal, holding that the statute of limitations had not expired as to the years for which appellant had failed to file his return (R. 15). Within the time allowed by law, a petition for rehearing was filed and

by order of the court denied on the 13th day of May, 1940 (R. 20-22), the judgment at that time becoming final. Appellant then made application to the Honorable Griffin Smith, Chief Justice of the Supreme Court of Arkansas, for an appeal to this Court, which was granted, and on which, on the 14th day of October, 1940, this Court noted probable jurisdiction (R. 25).

SUMMARY OF ARGUMENT

I.

The State of Arkansas has jurisdiction to levy an Income Tax upon private businesses carried on within the confines of the Hot Springs National Park Reservation.

A. The Act of Congress granting the State of Arkansas the right to tax all structures and other property in private ownership as personal property, on the Hot Springs National Park Reservation, which grant was accepted by the Legislature of Arkansas, included the right to levy an Income Tax.

B. These reciprocal Acts of Congress and the Legislature of Arkansas did not restrict the State of Arkansas to the imposition of an ad valorem personal property tax, based on the value of the property.

C. Under these reciprocal acts, the State of Arkansas has the right to tax the income derived from the use of privately-owned personal property within the Hot Springs National Park Reservation in the same manner and with the same uniformity of treatment as other income derived from within the state is taxed.

II.

Limitations or reservations upon the right of a state to levy taxes within its territorial boundaries should not be given a strict construction. Such limitations, when acquiesced in by the federal government, constitute a mutual declaration of rights.

III.

In taxing income derived from personal property located on the Hot Springs National Park Reservation, the Arkan-

sas Income Tax Law is not invalid as taxing income derived from outside the State because such income is derived from within the confines of the geographical boundaries of the State.

In order to come within the prohibition of the decisions in McCarroll, Commissioner v. Gregory-Robinson-Speas, Inc., 198 Ark. 235, 129 S. W. (2d) 254, and Royster-Guano Co. v. Virginia, 253 U. S. 412, the income which the State of Arkansas is forbidden to tax must be derived from beyond the geographical boundaries of the State of Arkansas.

A. Collins v. Yosemite Park & Curry Company, 304 U. S. 517, is direct authority to sustain this proposition.

B. Buckstaff Bath House Company v. McKinley, Commissioner, 308 U. S. 358, likewise sustains this proposition.

IV.

The cases relied on by appellant concern regulatory or general law applicable to the Hot Springs National Park Reservation, not the tax law applicable to the Hot Springs National Park Reservation.

ARGUMENT

I.

THE STATE OF ARKANSAS HAS JURISDICTION TO LEVY AN INCOME TAX UPON PRIVATE BUSINESSES CARRIED ON WITHIN THE CONFINES OF THE HOT SPRINGS NATIONAL PARK RESERVATION.

A. The Act of Congress granting the State of Arkansas the right to tax all structures and other property in private ownership as personal property, on the Hot Springs Reservation, which grant was accepted by the Legislature of Arkansas, included the right to levy an income tax.

At the outset appellee states to this Court that it does not dispute the general proposition of appellant that sovereign jurisdiction over the Hot Springs National Park Reservation, within which boundaries appellant carries on its business, has been ceded to the United States Government by the State of Arkansas. Appellee acknowledges that the United States government possesses a sovereign interest in the Hot Springs National Park area rather than a proprietary interest.

Since this sovereign interest of the United States government has been conceded by appellee, the sole remaining problem for decision is the question as to the right of the State of Arkansas to levy a tax of the nature of the one here involved, upon the income from business carried on by private corporations or individuals within the confines of the Hot Springs National Park Reservation. The answer to this question depends upon the construction of the Act of Congress of March 3, 1891, which consented to certain taxation of private enterprise located on the federal areas, and the construction of the Act of the Arkansas Gen-

eral Assembly of February 21, 1903, which accepted the grant of taxation made to the State by the Act of Congress of March 3, 1891.

Appellee earnestly submits to this Court that even though the United States Government possesses sovereign jurisdiction over the area within which appellant carries on its business, both the United States and the State of Arkansas, by their respective legislation pertaining to the Hot Springs Reservation, have agreed that the State of Arkansas has retained the right to levy a State Income Tax against a private business, such as appellant's, carried on within the National Park area. In support of this position, appellee presents the wording of the federal and state statutes reserving the right of taxation to the State of Arkansas, and the pertinent cases decided by this Court and other courts interpreting these and similar statutory provisions.

On March 3, 1891, Congress passed the following Act:

> "The consent of the United States is hereby given for the taxation under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property, of all structures and other property in private ownership on the Hot Springs Reservation." (26 Stat. 844, c. 533, par. 5).

This Congressional Act must be read in conjunction with Act No. 30 of the General Assembly of Arkansas, approved February 21, 1903, which, after ceding sovereign jurisdiction over the Hot Springs Reservation to the United States, accepted the grant of taxation made to the State by the above-quoted Congressional Act of 1891 in the following words: "provided, further, that the right to tax all struc-

tures and other property in private ownership on the Hot Springs Reservation accorded the State by the Act of Congress approved March 3, 1891, is hereby reserved to the State of Arkansas."

In the view that appellee takes of this case, the answer to the question as to the basic power of the State of Arkansas to levy a tax of this nature depends upon the interpretation of these two Acts. The Act of Congress, while recognizing that the United States exercises sovereign jurisdiction over this area, nevertheless concedes that the State of Arkansas has the right and power to tax the personal property situated within the area. The Act of the Arkansas Legislature, while granting that the United States possesses sovereign jurisdiction over the Hot Springs area, nevertheless expressly reserves the right to tax all structures and other property in private ownership located within the area.

This reservation of the right to tax all structures and other property in private ownership located within the area, as personal property, includes the right to levy a tax in the nature of the one involved in the instant cause, since the Arkansas Income Tax law levies a tax upon the profits derived from the use of this type of personal property. Appellee submits that this view has been announced and followed by this Court in the case of Buckstaff Bath House Company v. McKinley, Commissioner, 308 U. S. 358, where this Court affirmed the doctrine that the right to tax the personal property within the Hot Springs Reservation carried with it the right to tax the use of such property. At page 360, this Court said:

> "Petitioner paid into the Treasury of the United States the tax required by the Social Security Act for that period. But it refused to pay the State tax and sued in the State Court to enjoin its collection on the

grounds, inter alia, that it is an instrumentality of the United States and that certain Acts of Congress and Statutes of Arkansas exempt it from such taxation. The Supreme Court of Arkansas affirmed a decree sustaining a demurrer to the bill and dismissing it, on the grounds that the Arkansas Statute was applicable to petitioner and that, on construction of the Acts in question, petitioner did not have the claimed immunity, 127 S. W. (2d) 802. We granted certiorari because that decision was asserted to be repugnant to the Acts vesting exclusive jurisdiction over the Hot Springs Reservation in the United States.

"Petitioner's contention here, as below, is based primarily on the Act of Congress of March 3, 1891, 26 Statutes 842, whereby the consent of the United States was given for the taxation, under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property of all structures and other property in private ownership on the Hot Springs Reservation (National Park). 16 U. S. C. A. Sec. 365. Petitioner points out that the tax imposed by the Social Security Act against which appropriate credits may be made for contributions under State laws is laid, as stated by this Court in Steward Machine Company v. Davis, 301 U. S. 548, 57 Sup. Ct. 883, 886, 887, 81 L.Ed. 1279, 109 A. L. R. 1293, 'as a duty, an impost, or an excise upon the relation of employment'; and that as held by the Supreme Court of Arkansas the tax in question is 'not a tax on personal property; nor is it, in any sense, a property tax.' 127 S. W. (2d) 805. Therefore, petitioner concludes that the United States did not confer on the State of Arkansas the power to impose such

a tax but retains its sovereign jurisdiction in that regard since the power of Arkansas to tax was limited to the enumerated property taxes.

"We agree with the Supreme Court of Arkansas that the State had jurisdiction to impose the tax in question.

* * * * *

"Whether the same result would follow in case the cession Act had absolutely forbidden a State to impose any tax on petitioner we need not decide. For here Arkansas did have a prior power to tax petitioner's property. The implied authority which we here find to exist is therefore used not to override an earlier express authority but merely to extend it to a degree. *For in final analysis the Arkansas tax does have some relation to the use of petitioner's property.* The existence of the implied authority does not therefore do violence to the earlier statutory grant." (Emphasis supplied).

Buckstaff Bath House Company v. McKinley, Commissioner, 308 U. S. at 360, 361, 362, 364, 365.

The view that the State had reserved the right to levy an income tax upon the profits derived from the use of such property located within the Hot Springs Reservation had previously been announced by the Supreme Court of Arkansas in the case of Buckstaff Bath House Company v. McKinley, Commissioner, 198 Ark. 91, 127 S. W. (2d) 802. In that case the Arkansas Supreme Court had before it the same situation as was presented to this Court in the case of Buckstaff Bath House Company v. McKinley, Commissioner, supra, and it held to the same effect as did this Court.

The Arkansas Supreme Court stated, in holding that the businesses located on the Hot Springs Reservation were subject to the State Unemployment Compensation Tax:

> "The tax laid by Act 155 (The State Unemployment Compensation Tax) is not a tax on personal property; nor is it, in any sense, a property tax. But the Congress seemingly intended (and this construction is strengthened by the Gaines case) to permit the State to exercise its sovereignty within the Reservation with respect to the conduct of business, commerce, and the professions, subject only to the interest retained by the Government and the right to enforce restrictions under the federal laws and under rules promulgated by the Interior Department.
>
> "Lands were leased; and individuals, corporations, partnerships, etc., were permitted to erect buildings and to engage in activities for profit and amusement. Healing properties of the medicinal waters were recognized and the use of such waters was circumscribed in order that opportunity might be afforded the public to enjoy the benefits.
>
> "But the Government, per se, did not engage in the business of operating appellant's bath house. On the contrary, it leased the site and fixed the fees to be charged by operators . . ."

And, following logically from the facts in the situation as outlined, the Court continues:

> "Conceding, as we must, that authority of the State to collect the tax does not come from the Social Security Act of Congress, yet *the power conferred by Act of* 1891 *to tax personal property impliedly carried with it the right to tax the use of such property to the*

same extent and in manner similar to property not within the Reservation.'' (Emphasis supplied).

Buckstaff Bath House Company v. McKinley, Commissioner, 127 S. W. (2d) at 805 and 806.

Appellee respectfully submits to this Court that these cases are sufficient authority for the proposition that private businesses operating within the Hot Springs federal area are subject to the State tax laws which apply to the use of personal property within the State of Arkansas. By virtue of the provisions in the Act of Congress of March 3, 1891, and the Act of the Arkansas General Assembly of February 21, 1903, both this Court and the highest Court of the State of Arkansas have held that the taxing reservation contained in these two legislative acts includes the taxes which the State may see fit to levy upon the use of personal property within the State. The tax in question, being a tax upon the profits derived from the use of personal property within the Hot Springs National Park Reservation, is valid, therefore, when applied to the profits derived from appellant's private business operations within the Hot Springs Reservation.

B. These reciprocal Acts of Congress and the Legislature of Arkansas did not restrict the State of Arkansas to the imposition of an ad valorem personal property tax based on the value of the property.

It is appellant's contention that the reservation of taxation by the respective Acts of Congress and the Arkansas General Assembly is limited to the levying and collection of an *ad valorem* personal property tax. It is appellee's position that the right of taxation granted by the United States and reserved by the State of Arkansas is not limited to the ad valorem personal property tax.

The attention of this Court is called to the wording of the two pertinent statutes, neither of which contain the words 'ad valorem'' personal property tax, nor any words from which such a restriction could reasonably be inferred. If such had been the intention of Congress or the Arkansas General Assembly, it could have easily been expressed in the statutes which granted and reserved the right of taxation. Under the familiar rule of statutory construction laid down on numerous occasions by this court, statutes are to be construed in their ordinary and natural meaning. It is apparent that these statutes fail to limit the state's right to tax property within the Hot Springs Reservation to the ad valorem personal property tax.

Appellant argues that the income tax was unknown at the time this taxing reservation was made, and therefore the Legislature could not have intended to include such a tax in the reservation. Appellee urges the converse of this contention; namely, that the ad valorem tax was practically the only tax levied by the State of Arkansas at the time these acts were passed. Therefore, it would have been the normal thing for the Legislature of Arkansas to use the words ''ad valorem property tax'' in the statute which reserved the right of taxation, if it desired such a restriction to be made, but it is noteworthy that these limiting words were not used. It was obviously the intention of the respective Legislatures to allow the personal property located within the federal area to be taxed in other modes than the ad valorem tax, inasmuch as no such restriction was placed in the statutes.

Appellant further contends, in effect, that because the Legislature and Congress did not mention income tax in the provisions of the respective statutes, the State of Arkansas is limited to the collection of an ad valorem personal

property tax from appellant. In other words, says appellant, only the ad valorem personal property tax was intended to be applied by the respective legislative bodies. Appellee submits that these legislators wisely refrained from limiting the taxation of appellant, and others in a similar situation, to the ad valorem personal property tax, simply restricting the State of Arkansas to the imposition of a tax on the *personal property* within the reservation.

These legislators undoubtedly realized that at some time in the future other taxes than the ad valorem tax might be levied upon personal property by the State, and, therefore, they made provision in these statutes for such personal property taxes. This foresight would serve to protect the State from the loss of an unduly large amount of tax revenue from the increased growth of federal areas. Such a view is expressed by this Court in the case of James v. Dravo Contracting Company, 302 U. S. 134, where this Court said:

> "The possible importance of reserving to the State jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the Government expand and large areas within the States are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the State be compelled to grant it in giving its consent to purchases."

James v. Dravo Contracting Company, 302 U. S. 134, at page 148.

Additional evidence that the respective legislative bodies intended that the State of Arkansas should be allowed to levy other personal property taxes than the ad valorem

personal property tax is found in an Act of Congress which provides that:

> "All fugitives from justice taking refuge within (the boundaries of the reservation) shall, on due application to the executive of (Arkansas), whose warrant may lawfully run within said territory for said purpose, be subject to the laws which apply to fugitives from justice found in the State of Arkansas. Said section shall not be construed as to interfere with the right to tax all structures and other property in private ownership within the boundaries (described), accorded to the State of Arkansas by Sec. 365 of (Title 16, United States Code Annotated'').
>
> U. S. C. A., Title 16, Section 372.

It should be noted that the last sentence in this statute states that "the right to tax all structures and other property in private ownership within the boundaries accorded to the State of Arkansas by Sec. 365 of Title 16, U. S. C. A.", should not be interfered with. Congress did not mention any restriction upon the taxing right of the State of Arkansas in this statutory enactment; it described the right of taxation of the State as including the right to tax all structures and other property in private ownership within the boundaries of the Hot Springs Reservation, without any limitation to a particular form of such taxation.

The decision of this Court in Buckstaff Bath House Company v. McKinley, Commissioner, supra, and the decision of the Supreme Court of Arkansas in Buckstaff Bath House Company v. McKinley, Commissioner, supra, support appellee's position upon this point. Certainly the Unemployment Compensation tax was not included by name in the statutes which granted and reserved the right to tax

personal property within the federal areas, yet this Court and the highest Court of the State of Arkansas joined in the pronouncement that the State had the right to levy this tax upon businesses located within the Hot Springs Reservation.

Appellee urges, therefore, that the State reserved the right to tax personal property in other modes than the ad valorem personal property tax, and that the right to levy the State Income Tax, which is levied upon the profits from the use of such property, was reserved by the State of Arkansas and granted by the United States.

C. Under these reciprocal acts, the State of Arkansas has the right to tax the income derived from the use of privately-owned personal property within the Hot Springs Reservation in the same manner and with the same uniformity of treatment as other income derived from the use of personal property within the State is taxed.

Appellee concedes that the State Income Tax is not a property tax in the sense of a direct ad valorem property tax based upon the value of property, but appellee submits that the income tax is a tax upon the use of property, and, hence, is permitted under the statutes of Congress and the Arkansas General Assembly which reserved to the State of Arkansas the right to tax the personal property within the confines of the Hot Springs Reservation. The right to tax property carries with it the right to tax the use of such property, because the term "property" is the generic term which covers all of the component features of the total concept "property."

The right to own property, the right to use property, the right to possess property, the right to move property from place to place, the right to bequeath property—these and

other attributes are but separate elements which go to make the concept "property." Therefore, the right to tax personal "property" carries with it the right to tax the use of such property, since the use of the property is simply one privilege included in the general concept of "property."

As previously pointed out, this view was expressed by this Court in the case of Buckstaff Bath House Company v. McKinley, Commissioner, supra, where the Court said, at page 365:

> "For in final analysis the Arkansas tax does have some relation to the use of petitioner's property."

Appellee submits that the income tax has a much closer relation to the use of appellant's property than did the Unemployment Compensation tax in the case cited above, and, therefore, if this Court and the Supreme Court of Arkansas have already decided that the State of Arkansas may levy an Unemployment Compensation Tax upon private business operating within the Hot Springs area, then the State Income Tax is valid in its levy upon the profits derived from the use of property located within the Hot Springs Reservation.

Prior to the case of Buckstaff Bath House Company v. McKinley, Commissioner, supra, this Court had already expressed its view that if the right to tax property exists, the right to tax the use of that property is also present. In Henneford v. Silas Mason, 300 U. S. 577, this Court said:

> "The privilege of use is only one attribute, among many, of the bundle of privileges that make up property or ownership. A state is at liberty, if it pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively."

Henneford v. Silas Mason, 300 U. S. at 582.

In other words, the Court holds that if a state has the right to tax property, in the generic sense, it has the right to tax the use, or any other component part, of the property. Necessarily, the right to tax the use of property includes the right to tax the profits springing from the use of property.

In an earlier case, Corliss v. Bowers, 281 U. S. 376, this Court says:

> "Taxation is not so much concerned with the refinements of title as it is with the actual command over the property taxed, the actual benefit for which the tax is paid."

Corliss v. Bowers, 281 U. S. 376, at 378.

Again this Court said in N. C. and St. L. Ry. v. Wallace, 288 U. S. 249:

> "The power to tax property, the sum of all the rights and powers incident to ownership necessarily includes the power to tax its constituent elements."

N. C. and St. L. Ry. v. Wallace, 288 U. S. 249, at 267 and 268.

If the power to tax property includes the power to tax its constituent elements, then it logically follows that the power to tax property, such as was reserved to the State of Arkansas by the Statutes of 1891 and 1903, includes the right to tax the use of that property, which is certainly one of the constituent elements of the general concept, "property."

While it is true that the decision of the Arkansas Supreme Court in Ex Parte Gaines, 56 Ark. 212, 19 S. W. 602,

is no longer controlling because the statute of 1903 was passed subsequent to the date of that decision, which was rendered in 1892, appellee feels that the words of the Court in that opinion contain a compact summary of the tax situation with regard to private businesses located on the Hot Springs Reservation. At pages 215 and 216, that Court said:

> "No part of the Reservation, while owned by the United States, can be subjected to taxation by the State. Van Brocklin v. Tennessee, 117 U. S. 151. But when the Government parts with its title, or any interest therein, the property or interest which the Government parts with becomes subject to taxation. When it makes a lease to an individual of any interest or privilege in its lands within the Reservation, the interest of the lessee, whatever it may be, may be taxed, subject however, to all the rights and interests which the United States retains in the property.
>
> . . . .
>
> "The interest of the lessee in the land is not the property of the United States, and it is not a means employed by the Government to obtain a governmental end. The power to tax that interest does not involve therefore the power to destroy or disturb any interest of the United States Government.
>
> . . . .
>
> "All property in Arkansas belonging to individuals is subject to taxation except such as is specially exempted by the Constitution. Nothing else is or can be made exempt. Little Rock, etc., R. Co. v. Worthen, 46 Ark. 312. The interest which the appellant acquired by his lease was property, and is not exempt under the

law. It was the duty of the assessor to return it for taxation."

Appellee feels that this exposition of the general law governing the situation of appellant is still pertinent in shedding light on the proper rights of appellant in his tax relationship with the State of Arkansas.

If further authority than the case of Buckstaff Bath House Company v. McKinley, Commissioner, supra, is needed, appellee submits that the case of Collins v. Yosemite Park & Curry Company, 304 U. S. 517, decided on May 31, 1938, supports appellee's position in the instant cause.

By an Act of April 15, 1919, California granted exclusive jurisdiction over Yosemite Park as a whole, to the United States Government, reserving certain rights, including the right "to tax persons and corporations, their franchises and property" on the lands included; and this was accepted by the Act of Congress of June 2, 1920. The State of California, under her State liquor laws, sought to levy a license fee against sellers of alcoholic beverages within the Park, and also to tax the sales of alcoholic beverages within the Park area. This Court held that this taxing reservation did not authorize the State to exact, for the sale or importation of alcoholic beverages in the Park, the fees for license which are provided by the California liquor laws, because those provisions were regulatory in character. The reservation, however, authorized the State to tax sales in the Park, under the California Liquor Tax Laws. In other words, the State had retained the right to levy a sales tax upon the sale of certain beverages within the area over which the United States exercised sovereign jurisdiction, by virtue of the clause in the Statute of cession previously quoted, even though this clause does not mention sales tax in any fashion.

This Court said on this point:

> "The lower Court, in interpreting the language of the Acts of grant and acceptance was of the opinion that the saving of 'the right to tax persons and corporations, their franchises and property' was not sufficiently broad to justify the collection of fees for licenses under Section 5 and sales under Sections 23 and 24 of the Alcoholic Beverage Control Act . . .
>
> "A different conclusion obtains, however, with respect to the excise tax provisions of the Alcoholic Beverage Control Act, laying a tax, at a specified rate per unit sold, on beer, wine, and distilled spirits sold out 'in this State', ..." This Act is restricted to sales in this State', but that term embraces all territory within the geographical limits of the State . . . .
> "as in our judgment, as heretofore pointed out, *the tax provisions are enforceable* and the regulatory provisions unenforceable, it is necessary to reverse the decree . . ." (Emphasis supplied).

Collins v. Yosemite Park & Curry Company, 304 U. S. 518, at 530, 534, 535, 539.

Although the State statute in this case reserved "the right to tax persons and corporations, their franchises and property", and did not mention sales tax in any manner, this Court held that such a reservation gave the State of California the right to levy a sales tax upon all the beer, wine, and distilled spirits sold within the confines of the federal area involved in that case. If a sales tax was authorized by the words of such a statute, then an income tax is a most proper method of taxation under the words of the statutes in the case at bar.

Appellee submits, therefore, that the decision of this

Court in the cases of Buckstaff Bath House Company v. McKinley, Commissioner, supra, and Collins v. Yosemite Park & Curry Company, supra, and the decision of the Supreme Court of Arkansas in Buckstaff Bath House Company v. McKinley, Commissioner, supra, hold conclusively that the right to levy a tax in the nature of the one here involved was reserved to the State of Arkansas by the Congress of the United States and the General Assembly of Arkansas.

II.

LIMITATIONS OR RESERVATIONS UPON THE RIGHT OF A STATE TO LEVY TAXES WITHIN ITS TERRITORIAL BOUNDARIES SHOULD NOT BE GIVEN A STRICT CONSTRUCTION. SUCH LIMITATIONS, WHEN ACQUIESCED IN BY THE FEDERAL GOVERNMENT, CONSTITUTE A MUTUAL DECLARATION OF RIGHTS.

In construing a reservation of power by a State in an Act of cession, and the grant of that power in concurrence therewith by the United States Government, appellee urges that such reservations should be given liberal construction by the Courts.

In Collins v. Yosemite Park & Curry Company, supra, the Court says on this point, at page 532:

> "As the respective Acts of State and Nation were in the nature of a mutual declaration of rights, this is not an occasion for strict construction of a grant by a State limiting its taxing power." (Emphasis supplied).

Any doubt as to the extension of the power of taxation to include a situation that arises subsequent to the passage of the Act of cession, therefore, should be resolved in favor of

the governmental body which has relinquished jurisdiction over the area in question, in order that complete expression may be given to the intention of the respective legislative assemblies.

In Buckstaff Bath House Company v. McKinley, Commissioner, supra, this Court reiterated its holding that limitations upon the taxing powers of a State should be given a liberal construction.

Said this Court:

> "We agree with the Supreme Court of Arkansas that the State had jurisdiction to impose the tax in question.
>
> "Whether the same result would follow in case the cession Act had absolutely forbidden a State to impose any tax on petitioner we need not decide. For here Arkansas did have a prior power to tax petitioner's property. The implied authority which we here find to exist is therefore used not to override an earlier express authority but merely to extend it to a degree."

Buckstaff Bath House Company v. McKinley, Commissioner, 308 U. S. at 365.

By giving a liberal construction to the statute of tax reservation this Court thereby followed its pronouncement in Collins v. Yosemite Park & Curry Company, supra.

If the Courts gave a strict construction to such reservations of taxing authority, then the States would be limited to the imposition of those taxes which were in existence at the time of the passage of the granting and reserving Acts. Such a construction would mean that the states would be deprived of increasingly large sums of revenue by virtue of the fact that the federal government had acquired exten-

sive areas within the states for the carrying out of its normal functions and for that reason, if no other, state tax acts should be held valid in their application to private businesses carried on within federal areas, where the restrictive statutes furnish a reasonable basis for such a view.

III.

IN TAXING INCOME DERIVED FROM PERSONAL PROPERTY LOCATED ON THE HOT SPRINGS RESERVATION, THE ARKANSAS INCOME TAX IS NOT INVALID AS TAXING INCOME DERIVED FROM OUTSIDE THE STATE, BECAUSE SUCH INCOME IS DERIVED FROM WITHIN THE CONFINES OF THE GEOGRAPHICAL BOUNDARIES OF THE STATE.

In order to come within the prohibition of the decision in McCarroll, Commissioner v. Gregory-Robinson-Speas, Inc., 198 Ark. 235, 129 S. W. (2d) 254, and Royster-Guano Company v. Virginia, 253 U. S. 412, the income which the State of Arkansas is forbidden to tax must be derived from beyond the geographical boundaries of the State of Arkansas.

A. Collins v. Yosemite Park & Curry Company, 304 U. S. 517, is direct authority to sustain this proposition.

Appellant in his brief contends that the State of Arkansas could not levy and collect an income tax from appellant because appellant operated and carried on its entire business within the confines of the Hot Springs National Park Reservation, and that this area was "outside" the State of Arkansas, within the meaning of the decision of the Arkansas Supreme Court in the case of McCarroll, Commissioner v. Gregory-Rob-

inson-Speas, Inc., 198 Ark. 235, 129 S. W. (2d) 254, and Royster-Guano Company v. Virginia, 253 U. S. 512. Appellee believes that consideration of appellant's statement as to his position and supporting argument is sufficient to show that appellant's view is erroneous and untenable.

In McCarroll v. Gregory-Robinson-Speas, Inc., supra, the Court held that the income of domestic corporations derived from outside the State could not be taxed by the State of Arkansas, but the holding in that case was to exempt domestic corporations doing business both within and without the State from paying an income tax on their earnings from without the State, because domestic corporations doing business entirely without the State were not subject to an income tax on their earnings. Appellee believes that this decision is limited strictly to a situation where a domestic corporation derives income from within the State of Arkansas and *from other States.* To stretch the holding in McCarroll v. Gregory-Robinson-Speas Inc., supra, to income derived from the use of property on United States Reservations, such as appellant attempts to do here, is an extension of this decision to unwarranted lengths, a fact which becomes apparent at first glance.

It is obvious that income derived from a business carried on within a Reservation of the United States, where the Reservation is within the geographical boundaries of a State, is not income derived from outside the State.

Collins v. Yosemite Park & Curry Company, supra, is direct and controlling authority to sustain this proposition.

In that case, the California liquor laws imposed a tax per unit upon beer and wine sold "in this State" by a rectifier or wholesaler thereof. This Court held that this tax upon the sales of alcoholic beverages "in this State" ap-

plied to sales made within the confines of the National Park Reservation, even though exclusive, sovereign jurisdiction, with only a taxing reservation, had been ceded to the United States. The Court said on this question, at page 534:

> "A different conclusion obtains, however, with respect to the excise tax provisions of the Alcoholic Beverage Control Act, laying a tax, at a specified rate per unit sold, on beer, wine, and distilled spirits sold 'in this State' . . . The Act is restricted to sales *'in this State,'* but *that term embraces all territory within the geographical limits of the State . . .*" (Emphasis supplied).

The facts in the Collins case, supra, are almost identical with those of the instant cause so far as the question of taxing business operations "within" the United States Reservation is concerned, and the United States Supreme Court squarely held that business operations carried on within the confines of a United States Reservation were taxable by the State within whose geographical boundaries the Reservation was contained.

In the case at bar, the Hot Springs National Park Reservation is unquestionably within the geographical boundaries of the State of Arkansas, and hence, under the decision of this Court in Collins v. Yosemite Park & Curry Company, supra, appellant derives its income from within the State of Arkansas within the meaning of the Court in McCarroll, Commissioner v. Gregory-Robinson-Speas, Inc., supra, and Royster-Guano Company v. Virginia, supra.

B. Buckstaff Bath House Company v. McKinley, Commissioner, 308 U. S. 358, likewise sustains appellee's position.

If authority in addition to the case of Collins v. Yosemite Park & Curry Company, supra, is neccessary, appellee sub-

mits that the decision of this Court in Buckstaff Bath House Company v. McKinley, Commissioner, supra, and that of the Supreme Court of Arkansas in Buckstaff Bath House Company v. McKinley, Commissioner, supra, supports his position in the instant cause. In both of these cases it was held that the Buckstaff Bath House Company was subject to the provisions of the State Unemployment Compensation Law.

By the terms of this Unemployment Compensation Law, only businesses carried on within this State are subject to the terms of this Act; therefore, if the Buckstaff Bath House Company, which operated a business within the Hot Springs Reservation just as appellant does in the instant cause, was subject to the provisions of the Arkansas Unemployment Compensation Law, it must necessarily have been within the State of Arkansas, even though its entire business was operated and carried on within the Hot Springs Reservation.

As the Supreme Court of Arkansas said in its opinion when the case at bar was before it for decision:

> *"We do not agree with appellant that the reservation, for purposes of taxation, is not within the State.* If this theory were correct, the Buckstaff Bath House case was wrong, for Act 155 of the Arkansas General Assembly could have no extra-territorial effect." (Emphasis supplied.)

Superior Bath House Company v. McCarroll, Commissioner, The Law Reporter, Vol. 72, at page 799, 139 S. W. (2d) at page 378.

Appellee submits, therefore, that appellant's income is not derived from outside the State of Arkansas within the meaning of the decisions which have held that the State of

Arkansas does not have the right to tax income of domestic corporations derived from outside the State.

IV.

THE CASES RELIED UPON BY APPELLANT CONCERN REGULATORY OR GENERAL LAW APPLICABLE TO THE HOT SPRINGS NATIONAL PARK RESERVATION, NOT THE TAX LAW APPLICABLE TO THE HOT SPRINGS PARK RESERVATION.

Appellant cites several cases in his brief which appellee feels are not pertinent to the decision in the instant cause. These cases decided questions of general law, whereas in the case at bar the sole question is one of the scope of the state's taxing authority. Such is the distinction between the instant case and the case of Williams v. Arlington Hotel Company, 22 F. (2d) 669, and Arlington Hotel Company v. Fant, 278 U. S. 439. In both of these cases the State Acts in question were regulatory Acts by which the State was attempting to exercise its police powers. Such regulations affected the government rights to use its own lands and, of course, could have seriously hampered the government in the exercise of its power to lease lands within the Reservation.

The same distinction may be drawn in the case of Fant v. Arlington Hotel Company, 170 Ark. 440, 280 S. W. 20, and Arlington Hotel Company v. Fant, 176 Ark. 613, 4 S. W. (2d) 7. Each of these cases is concerned with the question of the jurisdiction of causes of action arising on the Hot Springs Reservation. In each case the cause of action had to be determined by the laws of the Reservation, and not the laws of Arkansas, because the State of Arkansas had yielded its sovereign powers over the Hot Springs Reser-

vation to the Federal Government, as appellee conceded at the outset of this brief, and, therefore, the general laws of the State of Arkansas had no application as to a cause of action arising within the Reservation. Such, however, is not the rule with regard to the taxing power of the State of Arkansas pertaining to the Hot Springs Reservation; this is a matter which is governed entirely by the provisions of the two pertinent statutes of Congress and the Arkansas General Assembly of 1891 and 1903 respectively, and it is to these statutes that the Court must look in order to determine the validity of the tax in question in the case at bar.

As pointed out by this Court in James v. Dravo Contracting Company, supra, at page 147:

> "'It is not questioned that the State may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired. The right of eminent domain inheres in the Federal Government by virtue of its sovereignty and thus it may, regardless of the wishes either of the owners or of the States, acquire the lands which it needs within their borders. Kohl v. United States, 91 U. S. 367, 371, 372. In that event, as in cases of acquisition by purchase without consent of the State, jurisdiction is dependent upon cession by the State and the State may qualify its cession by reservations not inconsistent with the governmental uses.''

In other words, it is entirely consistent with the respective sovereignties of the State and Federal Government that land be ceded to the federal government with the State retaining the right to pass tax legislation which applies to the federal area, when a sufficient reservation has been made by the State for that purpose.

CONCLUSION

The case may be thus recapitulated:

1. The State of Arkansas has jurisdiction to levy an income tax upon private business carried on within the confines of the Hot Springs National Park Reservation, because a reasonable construction of the statutes of Congress and the Arkansas General Assembly permits such a tax.

2. These reciprocal Acts of Congress and the Arkansas General Assembly do not restrict the State of Arkansas to the imposition of an ad valorem personal property tax upon private businesses operated within the Hot Springs National Park Reservation.

3. The right to tax the personal property in private ownership within the Hot Springs Reservation includes the right to tax the profits flowing from the use of such property.

4. Reservations upon the right of a State to levy taxes within its own boundaries should not be given a strict construction.

5. The Hot Springs Reservation is not outside the State of Arkansas, within the meaning of decisions forbidding the State of Arkansas to tax income of domestic corporations derived from outside the State.

It is submitted that the Supreme Court of Arkansas was entirely correct in its action and in the reasons given for that action and its decree should be affirmed.

Respectfully submitted,

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APPENDIX

Act No. 30 of the General Assembly of the State of Arkansas, approved February 21, 1903:

> "Section 1. That exclusive jurisdiction over that part of the Hot Springs Reservation known and described as part of the Hot Springs mountain and whose limits are particularly described by the following boundary lines *** all in Township 2 South, Range 19 West, in the County of Garland, State of Arkansas, being a part of the permanent United States Hot Springs Reservation, is hereby ceded and granted to the United States of America, to be exercised so long as the same shall remain the property of the United States; provided, that this grant of jurisdiction shall not prevent the execution of any process of the State, civil or criminal, on any person who may be on such reservation or premises; provided, further, that the right to tax all structures and other property in private ownership on the Hot Springs Reservation accorded the State by the Act of Congress approved March 3, 1901" (1891) "is hereby reserved to the State of Arkansas."

Act of Congress, March 3, c. 533 par, 26 Stat. 844:

> "The consent of the United States is hereby given for the taxation under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property, of all structures and other property in private ownership on the Hot Springs Reservation."

Act of Congress, April 20, 1904, c. 1400, par. 1, 33 Stat. 187:

"The portion of the Hot Springs mountain reservation in the State of Arkansas situated and lying within boundaries defined as follows *** all in Township 2 South, Range 19 West, in the County of Garland and State of Arkansas, being a part of the permanent United States Hot Springs Reservation, sole and exchausive jurisdiction over which was ceded to the United States by an Act of the General Assembly of the State of Arkansas ***, which cession is hereby accepted *** shall be under the sole and exclusive jurisdiction of the United States ***. Provided that nothing in this Act shall be so construed as to forbid the service within the said boundary of any civil or criminal process of any court having jurisdiction in the State of Arkansas *** And provided, further, that this Act shall not be so construed as to interfere with the right to tax all structures and other property in private ownership within the boundaries above described accorded to the State of Arkansas by Section 5 of the Act of Congress approved March 3, 1891, entitled 'An Act to Regulate the Granting of Leases at Hot Springs, Arkansas, and for Other Purposes'."

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SUPREME COURT OF THE UNITED STATES.

No. 180.—October Term, 1940.

Superior Bath House Company, Appellant, *vs.* Z. M. McCarroll, Commissioner of Revenues for the State of Arkansas.	Appeal from the Supreme Court of the State of Arkansas.

[February 3, 1941.]

Mr. Justice Black delivered the opinion of the Court.

By a 1929 Act, Arkansas imposed a tax of 2% on the net income of domestic corporations "with respect to carrying on or doing business" in the state.[1] Appellant, a corporation organized under Arkansas law, leases from the United States and operates for profit a bath house on the federal reservation at Hot Springs. Whether appellant is subject to the state tax depends on the interpretation of the the language of a provision of a Congressional Act of 1891 and the corresponding provision of an Arkansas Act of 1903. The Congressional Act reads: "The consent of the United States is hereby given for the taxation under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property of all structures and other property in private ownership on the Hot Springs Reservation."[2] The 1903 Arkansas act ceded to the United States exclusive jurisdiction over the business area of the reservation, reserving only the right to tax accorded by the 1891 Act and the right to

[1] Ark. Acts (1929) No. 118.

[2] 26 Stat. 844. The quoted language was section 5 of a general Act dealing with the reservation. The section was added as a Senate amendment to a House bill, and the only relevant legislative reference to it is a statement by the House conferees that "Section 5 provides for local taxation of the bath houses, so far as the consent of the United States is concerned." 22 Cong. Rec. 3513. Arkansas, in ceding exclusive jurisdiction over part of the reservation, expressly referred to the taxing powers conferred by the 1891 Act (Ark. Acts (1903) No. 30), and later federal Acts extending exclusive federal jurisdiction over larger portions of the reservation have provided that such extension of jurisdiction shall "not be so construed as to interfere with the right to tax all structures and other property. . . ." (E. g., 33 Stat. 187.)

serve criminal and civil process.[3] The Supreme Court of Arkansas held appellant liable for the tax,[4] and the case is here on appeal, as authorized by 28 U. S. C., § 344.

Arkansas does not contend, nor did the Supreme Court of that state hold, that appellant was liable for the state income tax under the general power of the state to tax corporations created pursuant to Arkansas law. On the contrary Arkansas admits that under the reciprocal state and federal acts the United States possesses complete sovereign power over the Hot Springs Reservation, subject to the right of the State of Arkansas to tax in accordance with the 1891 Act and subject to its right to execute within the reservation its civil and criminal process. The state does not claim a right of any kind to tax any corporation or individual doing business on the reservation unless the tax comes within the scope of its agreement with the government, effectuated by the 1891 and 1903 federal and state legislation. Since the state has taken this view, and since it is our opinion that the tax can be sustained on this basis, it is unnecessary for us to determine whether any other basis might conceivably exist.

While not controlling here, it has been the consistent conviction of the Arkansas court that the federal legislation conferred broad powers of taxation upon the sta . In *Ex parte Gaines,* 56 Ark. 227, decided one year after the original 1891 Act, the court held that a leasehold interest on the reservation was subject to state taxation. In *Buckstaff Bath House Co.* v. *McKinley,* 198 Ark. 91,[5] the court upheld the state unemployment compensation tax, saying of the 1891 Act: "The Congress seemingly intended (and this construction is strengthened by the *Gaines* case) to permit the State to exercise its sovereignty within the Reservation with respect to the conduct of business, commerce, and the professions, subject only to the interest retained by the Government and the right to enforce restrictions under the federal laws . . . ."

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[3] Ark. Acts (1903) No. 30.

[4] 139 S. W. (2d) 378. In addition to urging that Arkansas had no power to levy this tax, appellant had urged that it was denied equal protection by virtue of a 1931 statute exempting from the tax those domestic corporations organized for the purpose of doing business outside the state. (Ark. Acts (1931) No. 220.) This latter contention is wholly without merit, and will not be discussed.

[5] Affirmed on other grounds, 308 U. S. 358.

Appellant, however, reads the Act more narrowly than does the Arkansas court, and contends that the only taxes Arkansas can levy are ad valorem taxes imposed directly on tangible property. But the words tangible and ad valorem appear nowhere in the Act, nor do any synonymous words there appear. And in our opinion to construe the Act as though such words had been used would do violence to the intent of Congress. The language of Congress was peculiarly adapted to the broadening of the state's taxing power—not to its restriction. Thus, though under Arkansas law structures attached to land were considered a part of the realty, taxable or non-taxable with the land,[6] Congress provided that privately owned structures on the tax exempt land of the reservation should be taxed "as personal property." Not only was this done, but also all "other property in private ownership" was expressly made subject to state taxation. By these provisions Congress manifested its purpose that no type of privately owned property should escape the state's taxing power merely because it was owned or used on the reservation.

And appellant's insistence that these provisions permit only ad valorem taxation loses sight of the fact that the word property is by no means limited, in all its variations, to actual tangible physical things.[7] Its meaning must be determined from its context as illumined by the subject treated and the objectives sought. It is true that Arkansas had no corporate income tax in 1891, when the original permission to tax was granted. But taxation policies and systems change with necessities and experience, and no support can be found in the Act for a belief that Congress consented to state taxation only if Arkansas would make its 1891 tax system static. If we accept appellant's premise that what Congress consented to was ad valorem taxation only, we must conclude that Congress consented to a tax under which Arkansas was collecting virtually all of its revenues in 1891. Since 1900, state governments—Arkansas included—have tended to secure less and less of their revenue from ad valorem tax-

[6] At the time of the 1891 Act, the Arkansas law provided that "The term 'real property and lands' . . . shall be held to mean . . . all buildings, structures and improvements, and other fixtures of whatever kind. . . ." Ark. Stats. (Mansfield, 1884) § 5585. See Union Compress Co. *v.* State, 64 Ark. 136. Such is still the Arkansas law. Ark. Dig. Stats. (Pope, 1937) § 13358.

[7] Cf. Fidelity & Deposit Co. *v.* Arenz, 290 U. S. 66, 68.

ation, and more and more from taxes of other types.[8] The Arkansas legislature, in fact, in the preamble to the 1929 income tax act, gave as a reason for its adoption that "Agricultural and Industrial development is now being retarded because of a policy to secure practically all of the Revenue from an Advalorem Tax, thus penalizing and discouraging ownership of property. . . . ."[9] The narrow construction of the Act urged by appellant—a corporation created under the laws of Arkansas—would thus relieve it from an Arkansas tax on corporate income enacted, at least in part, as a substitute for those state ad valorem taxes to which appellant admits it is subject. And "The privilege of use is only one attribute, among many, of the bundle of privileges that make up property or ownership."[10] It is our opinion that the decision below must be affirmed.[11]

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[8] Arkansas, for example, received approximately 77% of its total revenue from general property taxes in 1915, while in 1937 this source accounted for only 13%. Financial Statistics of States, 1915, Table 3, pp. 66-67; *id.*, 1937, Table 5, pp. 36-41.

[9] Ark. Acts (1929) No. 118. Compare the preceding footnote.

[10] Henneford *v.* Silas Mason Co., 300 U. S. 577, 582.

[11] Cf. Buckstaff Bath House Co. *v.* McKinley, 308 U. S. 358; Collins *v.* Yosemite Park & Curry Co., 304 U. S. 518.

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[February 3, 1941.]

Mr. Justice Stone, concurring.

Mr. Justice Roberts and I concur in the judgment of the Court but upon different grounds from those stated in its opinion.

The state court has held that so far as the state constitution and laws are involved it has power to lay the present tax. It is no concern of ours what reasons are assigned for that conclusion. The only question for decision here is whether there is anything in the acts of Congress establishing the reservation or in the relationship of the two sovereignties, state and national, to prevent the state from laying a tax on the net income of its own corporation.

If the consent of the national government were needful in order to sustain the present tax we should have difficulty in finding that consent in the words of the Act of Congress authorizing the state to tax "all structures and other property in private ownership on the . . . reservation". But we think that such consent is unnecessary to enable a state to tax the income of its own corporations, derived from property located on the reservation. It is enough that no Act of Congress and no agreement by the state with the Federal Government prohibits the tax.

The fact that income-producing property is physically located on the territory of another sovereignty does not foreclose the state from taxing its own residents and corporations on the income derived from the property. *Cohn* v. *Graves*, 300 U. S. 308; *Lawrence* v. *State Tax Commission*, 286 U. S. 276; see *Newark Fire Insurance Co.* v. *State Board*, 307 U. S. 313. We have recently held that such a tax is not a tax on the income-producing property in any such sense as to preclude the tax for want of "jurisdiction" of the state to lay it. *Cohn* v. *Graves, supra*, 313, 314; *Graves* v. *O'Keefe*, 306

U. S. 466, 480. There is no occasion now to give renewed currency to the notion erroneously attributed to *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429; *cf. Cohn* v. *Graves, supra,* 314, 315, that a tax on income is subject to the limitations of a tax on the property which produces it.

For that reason if Arkansas had made an unrestricted grant of the reservation it could not be said to have renounced its authority to tax income of its corporations or citizens derived from property on the reservation, more than if it were located in the District of Columbia or in another state. It clearly has not done so by reserving the right to lay a property tax within the reservation or by agreeing that the United States shall have exclusive jurisdiction over it for any or for every purpose. The state's power to lay the tax, being independent of its jurisdiction over the ceded territory, subsists unless waived or prohibited by competent authority.

Whatever constitutional power the federal government may have to prohibit the state taxation of income derived from property located on the reservation, regarded as a federal instrumentality, it is plain that it has not assumed to exercise the power. *Graves* v. *O'Keefe, supra,* 480. Since the state has not surrendered its constitutional power to tax the income and since Congress has not assumed in the act establishing the reservation, or otherwise, to prohibit the tax, the power of the state is unimpaired, unless restricted by its own constitution and laws.

Mr. Justice FRANKFURTER while agreeing with the Court's opinion also agrees with the view expressed in this opinion.